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HOUSE BILL 470

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Ben Lujan

FOR THE WELFARE REFORM OVERSIGHT COMMITTEE

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; REDUCING THE INTEREST RATE FOR DELINQUENT CHILD SUPPORT; ELIMINATING LICENSE PENALTIES FOR DELINQUENT CHILD SUPPORT BASED ON UNPAID INTEREST; CHANGING THE STATUTE OF LIMITATIONS FOR PATERNITY CLAIMS; CHANGING THE STATUTE OF LIMITATIONS FOR PAST CHILD SUPPORT CLAIMS; ESTABLISHING AN ARREARS MANAGEMENT PROGRAM FOR UNPAID CHILD SUPPORT INTEREST AMNESTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-4-7.3 NMSA 1978 (being Laws 1999, Chapter 299, Section 1) is amended to read:

"40-4-7.3. ACCRUAL OF INTEREST--DELINQUENT CHILD AND SPOUSAL SUPPORT. --

A. Interest shall accrue on delinquent child support at the rate of four percent and spousal support at the

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1 rate set forth in Section 56-8-4 NMSA 1978 in effect when the
2 support payment becomes due and shall accrue from the date the
3 support is delinquent until the date the support is paid [~~or~~
4 ~~consolidated in a judgment~~].

5 B. Interest shall accrue on a consolidated judgment
6 for delinquent child support at the rate [~~provided in Section~~
7 ~~56-8-4 NMSA 1978 in effect~~] of four percent when the
8 consolidated judgment is entered until the judgment is
9 satisfied.

10 C. Unless the order, judgment, decree or wage
11 withholding order specifies a due date other than the first day
12 of the month, support shall be due on the first day of each
13 month and, if not paid by that date, shall be delinquent.

14 D. In calculation of support arrears, payments of
15 support shall be first applied to the current support
16 obligation, next to any delinquent support, next to any
17 consolidated judgment of delinquent support, next to any
18 accrued interest on delinquent support and next to any interest
19 accrued on a consolidated judgment of delinquent support.

20 E. The human services department shall have the
21 authority to forgive accrued interest on delinquent child
22 support assigned to the state not otherwise specified in an
23 order, judgment, decree or income withholding order if, in the
24 judgment of the secretary of human services, forgiveness will
25 likely result in the collection of more child support, spousal

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1 support or other support and will likely result in the
2 satisfaction of the judgment, decree or wage withholding order.
3 This authority shall include the ability to authorize the
4 return of suspended licenses.

5 F. The human services department may adopt rules
6 and regulations as necessary to implement the provisions of the
7 Support Enforcement Act."

8 Section 2. Section 40-5A-4 NMSA 1978 (being Laws 1995,
9 Chapter 25, Section 4, as amended) is amended to read:

10 "40-5A-4. APPLICATION FOR LICENSE. --

11 A. A person who submits an application for a
12 license issued by a board is not eligible for issuance of the
13 license if he is not in compliance [~~with a judgment and order~~
14 ~~for support or subpoenas or warrants relating to paternity or~~
15 ~~child support proceedings~~]. A board that denies or proposes to
16 deny the application on the grounds that [~~he~~] the applicant is
17 not in compliance [~~with a judgment and order for support or~~
18 ~~subpoenas or warrants relating to paternity or child support~~
19 ~~proceedings~~] shall advise the applicant in writing of the
20 grounds for denial of [~~his~~] the application and [~~his~~] the
21 applicant's right, if any, to a hearing. The applicant shall
22 have a right to a hearing if, pursuant to applicable law
23 governing hearings, the denial of the application on other
24 grounds would have entitled the applicant to a hearing. The
25 application shall be reinstated if, within thirty days of the

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1 date of the notice, the applicant provides the board with a
2 certified statement from the department that ~~[he]~~ the applicant
3 is in compliance ~~[with a judgment and order for support or~~
4 ~~subpoenas or warrants relating to paternity or child support~~
5 ~~proceedings]~~.

6 B. The provisions of this section do not apply if
7 the applicant's noncompliance is based solely on unpaid
8 interest. "

9 Section 3. Section 40-5A-5 NMSA 1978 (being Laws 1995,
10 Chapter 25, Section 5, as amended) is amended to read:

11 "40-5A-5. RENEWAL OF LICENSE. --

12 A. A licensee who seeks renewal of his license from
13 a board is not eligible to have the license renewed if ~~[he]~~ the
14 licensee is not in compliance ~~[with a judgment and order for~~
15 ~~support or subpoenas or warrants relating to paternity or child~~
16 ~~support proceedings]~~. A board that denies or proposes to deny
17 the renewal of a license on the grounds that the licensee is
18 not in compliance ~~[with a judgment and order for support or~~
19 ~~subpoenas or warrants relating to paternity or child support~~
20 ~~proceedings]~~ shall advise the licensee in writing of the
21 grounds for the denial or proposed denial and ~~[his]~~ the right
22 to a hearing. The licensee shall have a right to a hearing on
23 the denial of the renewal of ~~[his]~~ the license pursuant to the
24 applicable law governing hearings. The application for renewal
25 shall be reinstated if, within thirty days of the date of the

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1 notice, the licensee provides the board with a certified
2 statement from the department that ~~[he]~~ the licensee is in
3 compliance ~~[with a judgment and order for support or subpoenas~~
4 ~~or warrants relating to paternity or child support~~
5 ~~proceedings]~~.

6 B. The provisions of this section do not apply if
7 the licensee's noncompliance is based solely on unpaid
8 interest. "

9 Section 4. Section 40-5A-6 NMSA 1978 (being Laws 1995,
10 Chapter 25, Section 6, as amended) is amended to read:

11 "40-5A-6. SUSPENSION OR REVOCATION OF LICENSE. --

12 A. The failure of a licensee to be in compliance
13 ~~[with a judgment and order for support or subpoena or warrants~~
14 ~~relating to paternity or child support proceedings]~~ is grounds
15 for suspension or revocation of a license. The proceeding
16 shall be conducted by a board pursuant to the law governing
17 suspension and revocation proceedings for the license.

18 B. The provisions of this section do not apply if
19 the licensee's noncompliance is based solely on unpaid
20 interest. "

21 Section 5. Section 40-5A-7 NMSA 1978 (being Laws 1995,
22 Chapter 25, Section 7, as amended) is amended to read:

23 "40-5A-7. CERTIFIED LISTS. --

24 A. The department shall provide each board with a
25 certified list of obligors not in compliance ~~[with a judgment~~

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1 ~~and order for support or subpoenas or warrants relating to~~
2 ~~paternity or child support proceedings]~~ within ten calendar
3 days after the first day of each month. By the end of the
4 month in which the certified list is received, each board shall
5 report to the department the names of applicants and licensees
6 who are on the list and the action the board has taken in
7 connection with such applicants and licensees.

8 B. The provisions of this section do not apply if
9 the obligor's noncompliance is based solely on unpaid
10 interest. "

11 Section 6. Section 40-5A-8 NMSA 1978 (being Laws 1995,
12 Chapter 25, Section 8) is amended to read:

13 "40-5A-8. COURT ORDERS. --

14 A. As part of a judgment and order for support, a
15 district court may require the obligor to surrender any license
16 held by ~~[him]~~ the obligor or may refer the matter to the
17 appropriate board for further action.

18 B. The provisions of this section do not apply if
19 the obligor's noncompliance is based solely on unpaid
20 interest. "

21 Section 7. Section 40-5A-10 NMSA 1978 (being Laws 1995,
22 Chapter 25, Section 10, as amended) is amended to read:

23 "40-5A-10. ACTION BY SUPREME COURT. --

24 A. The supreme court shall adopt by order rules for
25 the denial of applications or licensing and renewal of licenses

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1 and for the suspension or revocation of licenses of lawyers and
2 other persons licensed by the supreme court for the failure of
3 an applicant or licensee to be in compliance [~~with a judgment~~
4 ~~and order for support or subpoenas or warrants relating to~~
5 ~~paternity or child support proceedings~~] and may delegate the
6 enforcement of the rules to a board under its supervision.

7 B. The provisions of this section do not apply if
8 the licensee's noncompliance is based solely on unpaid
9 interest. "

10 Section 8. Section 40-11-7 NMSA 1978 (being Laws 1986,
11 Chapter 47, Section 7) is amended to read:

12 "40-11-7. DETERMINATION OF FATHER AND CHILD
13 RELATIONSHIP--WHO MAY BRING ACTION--WHEN ACTION MAY BE
14 BROUGHT. --

15 A. Any interested party may bring an action for the
16 purpose of determining the existence or nonexistence of the
17 parent and child relationship within twelve years of the birth
18 of the child.

19 B. If the interested party does not bring an action
20 within the twelve-year statute of limitations, the interested
21 party must show good cause.

22 [~~B.~~] C. If an action under this section is brought
23 before the birth of the child, all proceedings shall be stayed
24 until after the birth, except service of process and the taking
25 of depositions to perpetuate testimony. "

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1 Section 9. Section 40-11-15 NMSA 1978 (being Laws 1986,
2 Chapter 47, Section 15, as amended) is amended to read:

3 "40-11-15. JUDGMENT OR ORDER. --

4 A. The judgment or order of the court determining
5 the existence or nonexistence of the parent and child
6 relationship is determinative for all purposes.

7 B. If the judgment or order of the court is at
8 variance with the child's birth certificate, the court shall
9 order that a new birth certificate be issued.

10 C. The judgment or order may contain any other
11 provision directed against or on behalf of the appropriate
12 party to the proceeding concerning the duty of past and future
13 support, the custody and guardianship of the child, visitation
14 with the child, the furnishing of bond or other security for
15 the payment of the judgment or any other matter within the
16 jurisdiction of the court. Pursuant to the provisions of
17 Section 40-11-23 NMSA 1978, the judgment or order may direct
18 the father to pay the reasonable expenses of the mother's
19 pregnancy, birth and confinement. The court shall order child
20 support retroactive to the date of the child's birth pursuant
21 to the provisions of Sections 40-11-23 and 40-4-11 through
22 40-4-11.3 NMSA 1978; provided that, in deciding whether or how
23 long to order retroactive support, the court shall consider:

24 (1) whether the alleged or presumed father has
25 absconded or could not be located; and

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1 (2) whether equitable defenses are applicable.

2 D. A determination of parentage and adjudication of
3 support is binding on:

4 (1) a signatory on an acknowledgment of
5 paternity;

6 (2) a nonresident party subject to the court's
7 jurisdiction pursuant to Section 40-6A-201 NMSA 1978; and

8 (3) the child, if:

9 (a) the determination was based on an
10 acknowledgment of paternity and the acknowledgment is
11 consistent with the results of genetic testing;

12 (b) the child was a party or was
13 represented in the proceeding by a guardian ad litem;

14 (c) there is a stipulation or admission
15 in the final order that the parties are the parents of the
16 child; or

17 (d) in a proceeding to dissolve a
18 marriage or establish support, a final order expressly
19 identified the child as a "child of the marriage", "issue of
20 the marriage", "child of the parties" or similar words that
21 indicate the parties are the parents of the child and, if
22 applicable, the court had personal jurisdiction over any
23 nonresident party pursuant to Section 40-6A-201 NMSA 1978.

24 E. Support judgments or orders ordinarily shall be
25 for periodic payments, which may vary in amount. In the best

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1 interest of the child, a lump-sum payment or the purchase of an
2 annuity may be ordered in lieu of periodic payments of support;
3 provided, however, nothing in this section shall deprive a
4 state agency of its right to reimbursement from an appropriate
5 party should the child be a past or future recipient of public
6 assistance.

7 F. In determining the amount to be paid by a parent
8 for support of the child, a court, child support hearing
9 officer or master shall make such determination in accordance
10 with the provisions of the child support guidelines of Section
11 40-4-11.1 NMSA 1978.

12 G. Bills for pregnancy, childbirth and genetic
13 testing are admissible as evidence without requiring
14 third-party foundation testimony and constitute prima facie
15 evidence of amounts incurred."

16 Section 10. Section 40-11-16 NMSA 1978 (being Laws 1986,
17 Chapter 47, Section 16, as amended) is amended to read:

18 "40-11-16. COSTS.--The court may order reasonable fees of
19 counsel, experts, the child's guardian and other costs of the
20 action and pre-trial proceedings, including blood or genetic
21 tests, to be paid by any party in proportions and at times
22 determined by the court pursuant to the provisions of Section
23 40-11-23 NMSA 1978. The court may order the proportion of any
24 indigent party to be paid from court funds."

25 Section 11. Section 40-11-23 NMSA 1978 (being Laws 1986,

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1 Chapter 47, Section 23, as amended) is amended to read:

2 "40-11-23. LIMITATION. --

3 A. An action to determine a parent and child
4 relationship under the Uniform Parentage Act shall be brought
5 no later than [~~three years after the child has reached the age~~
6 ~~of majority.~~

7 ~~B. The action to establish paternity under that act~~
8 ~~shall be available for any child for whom a paternity action~~
9 ~~was brought and dismissed on or after August 16, 1984 because~~
10 ~~of the application of a statute of limitations of less than~~
11 ~~eighteen years] twelve years after the birth of the child.~~

12 B. If the interested party does not bring an action
13 within the twelve-year statute of limitations, the interested
14 party must show good cause. "

15 Section 12. Section 56-8-4 NMSA 1978 (being Laws
16 1851-1852, p. 255, as amended) is amended to read:

17 "56-8-4. JUDGMENTS AND DECREES--BASIS OF COMPUTING
18 INTEREST. --

19 A. Interest shall be allowed on judgments and
20 decrees for the payment of money from entry and shall be
21 calculated at the rate of eight and [~~three-quarters~~]
22 three-fourths percent per year, unless:

23 (1) the judgment is rendered on a written
24 instrument having a different rate of interest, in which case
25 interest shall be computed at a rate no higher than specified

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1 in the instrument; ~~[or]~~

2 (2) the judgment is based on tortious conduct,
3 bad faith or intentional or willful acts, in which case
4 interest shall be computed at the rate of fifteen percent; or

5 (3) the judgment is based on unpaid child
6 support, in which case interest shall be computed at the rate
7 of four percent.

8 B. Unless the judgment is based on unpaid child
9 support, the court in its discretion may allow interest of up
10 to ten percent from the date the complaint is served upon the
11 defendant after considering among other things:

12 (1) if the plaintiff was the cause of
13 unreasonable delay in the adjudication of the plaintiff's
14 claims; and

15 (2) if the defendant had previously made a
16 reasonable and timely offer of settlement to the plaintiff.

17 C. Nothing contained in this section shall affect
18 the award of interest or the time from which interest is
19 computed as otherwise permitted by statute or common law.

20 D. The state and its political subdivisions are
21 exempt from the provisions of this section except as otherwise
22 provided by statute or common law. "

23 Section 13. A new section of the Support Enforcement Act
24 is enacted to read:

25 "[NEW MATERIAL] UNPAID CHILD SUPPORT INTEREST ARREARS

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1 MANAGEMENT PROGRAM --The department shall designate an arrears
2 management program starting on or after December 15, 2004 to
3 provide amnesty for child support arrears, pursuant to
4 procedures adopted by the department. The arrears management
5 program shall not exceed more than twelve months and shall only
6 be authorized thereafter every two years. The department
7 shall, before renewing the next arrears management program,
8 provide to the interim welfare reform oversight committee a
9 report on the previous arrears management program "

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